

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

ALBERTO TANGONAN TANGONAN JR.,

Debtor

Chapter 7

Case No. 21-11288-CMA

**RESPONSE TO DEBTOR'S OBJECTION
TO AMENDED PROOF OF CLAIM OF
UNITED STATES (INTERNAL
REVENUE SERVICE)**

The United States of America, on behalf of the Internal Revenue Service, hereby responds to the Debtor's Objection to Claim. (Dkt. 54). The United States requests that the Court overrule the objection, or, in the alternative, set a discovery schedule.

I. Background

Debtor filed this Chapter 7 case on June 30, 2021. (Dkt. 1). On August 17, 2021, the IRS filed a timely proof of claim and later amended it three times, most recently on February 2, 2022. The operative proof of claim asserts a secured claim based on income tax assessments for the 2009 year, a priority unsecured claim based on income tax assessments for the 2018—2019 tax years, and a general unsecured claim for the penalties associated with the above assessments. (Claim No. 4-2). On February 15, 2022, the Court entered an order avoiding the penalty portion of the IRS tax lien pursuant to 11 U.S.C. § 724(a), and otherwise allowing the IRS claim in full. (Dkt. 58).

Debtor objects to unsecured priority portion of the United States claim. In support, he attaches an

1 undated declaration asserting that he has filed amended returns for the 2019 and 2020 tax years, and an
2 original return for the 2018 year, which he states, show that he is entitled to refunds for each of those
3 years. (Dkt. 55).¹

4 **II. Argument**

5 Rule 3001 provides that a proof of claim executed and filed in accordance with the bankruptcy
6 rules “shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P.
7 3001(f). A properly executed proof of claim both shifts the evidentiary burden of producing evidence
8 and entitles the claimant to share in the distribution “unless an objector comes forward with evidence
9 contradicting the claim.” *In re Global W. Dev. Corp.*, 759 F.2d 724, 727 (9th Cir. 1985). To overcome
10 the claim’s presumption of validity, the objecting party must come forward with evidence equal in
11 probative force to that underlying the proof of claim. *See Wright v. Holm (In re Holm)*, 931 F.2d 620,
12 623 (9th Cir. 1991). With regard to tax liabilities in particular, the burden of proof is on the taxpayer and
13 does not shift to the government simply because the liabilities are contested under the aegis of
14 bankruptcy. *Raleigh v. Ill. Dep’t of Revenue*, 530 U.S. 15, 21–22 (2000).

15 ***Debtor’s 2018 Income Tax Liability***

16 The United States’ priority unsecured claim for the 2018 tax year is estimated based on available
17 information because the Debtor had not filed a tax return at the time of the petition. (*See* Claim No. 2-4).
18 Debtor now asserts that he has filed a 2018 return, which he contends shows that he is due a refund.
19 (Dkt. 55). However, the IRS has no record that such a return was filed. Declaration of Priscilla Burks
20 (“Burks Decl.”) ¶¶ 5-6² The IRS may be able to amend its proof of claim upon receipt of a complete,
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22
23 ¹ The Declaration states that “the respective tax returns are attached hereto and incorporated
24 herein by this reference.” However, the only additional exhibit accompanying Debtor’s Objection to
Proof of Claim is a photograph of what appears to be Debtor’s 2018 return dated August 8, 2021. (Dkt.
54-2).

25 ² It is possible that Debtor’s 2018 return has not yet been processed by the IRS.

1 signed, unredacted copy of Debtor's 2018 return; however, to date, Debtor has not provided such a copy.
2 *Id.* ¶ 7. Accordingly, Debtor's objection should be overruled with respect to the 2018 income tax
3 assessment.

4 ***Debtor's 2019 Income Tax Liability***

5 At the time of the petition, the IRS also had not yet received Debtor's 2019 tax return. (Claim
6 No. 2-1). The IRS has now received Debtor's 2019 tax return and amended its proof of claim
7 accordingly. (Claim No. 2-4). The IRS's unsecured priority claim for the 2019 year is based upon a
8 return Debtor filed on or around February 24, 2021. Burks Decl. ¶ 8. Debtor's return showed a refund
9 due of \$1,106; however, the IRS corrected a math error on the return and determined that Debtor had a
10 tax liability of \$1,861.85 and an unpaid tax liability of \$755.85, plus interest and penalties. *Id.* ¶ 9. In
11 November 2021, Debtor submitted an amended redacted Form 1040 for 2019 and an unsigned Form
12 1040-X, Amended U.S. Individual Income Tax Return, for the 2019 tax year to the IRS Insolvency
13 Specialist. *Id.* ¶ 10. However, the IRS was unable to process the amended returns because they were
14 redacted and unsigned, and Debtor did not submit signed and unredacted forms despite being asked to
15 do so. *Id.* ¶ 10. Accordingly, Debtor's Objection should be overruled with respect to the 2019 tax
16 assessment.

17 ***Debtor's 2020 Income Tax Liability***

18 At the time of the petition, the IRS also had not yet received Debtor's 2020 tax return. (Claim
19 No. 2-1). Since that time, the IRS has processed Debtor's tax return, which showed a refund due of
20 \$1,526. Burks Decl. ¶ 11. That refund has been applied to Debtor's 2009 income tax liability. *Id.* ¶ 12³
21 After processing Debtor's 2020 return, the IRS amended its proof of claim to show \$0 due for the 2020
22 tax year. Claim No. 2-4. Accordingly, Debtor's Objection to Proof of Claim should be overruled as moot
23

24 ³ A setoff of an income tax refund with respect to a pre-petition period against an income tax
25 liability that also ended pre-petition does not violate the automatic stay. 11 U.S.C. § 362(b)(26).

1 with respect to the 2020 tax year.

2 ***IRS Secured Claim***

3 Neither Debtor's Objection to Proof of Claim nor any of the supporting materials address the
4 secured portion of the IRS Claim. However, Debtor's proposed order submitted with the Objection
5 would disallow the IRS claim in full if approved by the Court. *See* (Dkt. 54-1) ("it is hereby
6 ORDERED, ADJUDGED AND DECREED that Claim No. 2 filed by Internal Revenue Service as
7 partially unsecured priority [] and *as secured* [] be and it (sic) hereby is disallowed in it's (sic) entirety")
8 (emphasis added). Because Debtor has submitted no materials nor made any argument to support
9 disallowing the secured portion of the IRS claim, Debtor's Objection should be overruled to the extent it
10 objects to the secured portion of the IRS Claim.

11 **III. CONCLUSION**

12 For the foregoing reasons, the United States, on behalf of the IRS, respectfully requests that the
13 Court overrule Debtor's objection to claim and allow the IRS Claim, Claim No. 2-4, subject to the
14 Court's February 15, 2022, order allowing the IRS claim. (Dkt. 58).

15 Dated: April 13, 2022.

Respectfully submitted,

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